BEFORE THE FOREST PRACTICES APPEALS BOARD
STATE OF WASHINGTON

MARY J. REPAR, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES and SKAMANIA COUNTY, Respondent.	FPAB NO. 05-001 ORDER GRANTING SUMMARY JUDGMENT TO DNR

This case concerns a proposal by Skamania to develop its property in what is called the "Wind River Nursery" in Skamania County, Washington, utilizing a Public Development Authority (PDA). Appellant Mary J. Repar is challenging the Washington Department of Natural Resources' (DNR) decision on FPA No. 2910947 approving a 12-acre timber harvest proposed by Skamania County (County). In this case, the County is also the landowner, the timber owner, and the operator of the property. Respondents have jointly moved for dismissal of the action arguing that the Forest Practices Appeals Board (FPAB) lacks jurisdiction to overturn a DNR decision by challenging the SEPA decisions made in the context of the County's project approval process which is now complete and which was not appealed. Appellant Repar alleges that, because the County was both the owner and the reviewing entity serving as the SEPA lead

agency, DNR's approval of the forest practices application is inherently flawed, particularly with regard to the requirements of the State Environmental Policy Act (SEPA).

The Board deliberating on the motion was comprised of Tom P. May, chair, and John Giese, member. Joel Rupley, Member, recused himself at the commencement of the appeal and did not participate in the case. Administrative Appeals Judge, Cassandra Noble, presided for the Board. In ruling on the motion, the Board considered the following material:

1. Respondent DNR's Motion for Summary Judgment with exhibits (April 28, 2005);
2. Appellant's Response to Respondent's Motion for Summary Judgment with exhibits (May 16, 2005);
3. Respondent DNR's Reply to Appellant's Response to Respondent's Motion for Summary Judgment with exhibits (May 23, 2005);
4. Declaration of Karen Witherspoon in Support of DNR's Motion for Summary Judgment with exhibits;
5. Declaration of Steven Hartsell in Support of DNR's Motion for Summary Judgment;
6. Declaration of Sharon Dobyne in Support of DNR's Motion for Summary Judgment;
7. Supplemental Declaration of Karen Witherspoon in Support of DNR's Motion for summary Judgment; and
8. Supplemental Declaration of Steven Hartsell in Support of DNR's Motion for Summary Judgment.

BACKGROUND FACTS

Skamania County owned the real property that is the subject of this appeal in the Wind River Nursery in Skamania County, Washington. During the period of October 2004 to January 31, 2005, the County began the approval process for developing the Wind River development site utilizing a public development authority (PDA). (Declaration of Sharon Dobyne). Multiple permits were required for the project. As the lead agency, Skamania County conducted the SEPA review. Skamania County Planning Director, Karen A. Witherspoon, AICP, served as the SEPA responsible official who reviewed the environmental impacts posed by Skamania County's proposal. Ms. Witherspoon did not work for the PDA, which is a separate Skamania County entity not within the Planning Department. Among other permitted activities, the proposal involved the harvest of approximately 12 acres of timber located in six different cutting units. Witherspoon began her review of the County's proposal on October 8, 2004.

In connection with its project approval application process, the County completed an environmental checklist (a copy of which was, in turn, submitted to DNR as part of Forest Practices Application No. 2910947). Question No. 5 b. of the checklist requested a list of any threatened or endangered species known to be on or near the site. The County's response was "none known." In response to the summary judgment motion, Appellant Repar submitted no declarations or other evidence to contradict or question the credibility the County's notation "none known" on the environmental checklist regarding the presence of any threatened or endangered species known to be on or near the site.

Planning Director Witherspoon stated that when she reviewed the SEPA documents for the Wind River proposal, she did not know that steelhead were present in the vicinity of the proposal and believed that the documents accurately identified existing environmental conditions. In any event, Witherspoon considered that, in light of the fact that no trees would be cut within at least 100 feet of either Trout or Martha Creek based on the County's original no-cut buffer, a subsequent identification of steelhead would not have impacted her threshold determination. (Supplemental Declaration of Witherspoon, p.2). Witherspoon determined that, with the mitigation, there would be no significant impact from the proposed harvest. Her reasoning was that, based on Forest Practices Rules, the riparian management zone for Martha Creek would be 140 feet wide. Due to the distance of the proposed harvest from Trout Creek and the presence of a county road between the proposed harvest and Trout Creek, no additional buffer mitigation was required on that harvest unit. Together, the minimal amount of harvest requested in the County's Forest Practices Application, the application of the 100-foot no-touch (no-cut) buffer on Martha Creek, along with the other mitigation listed would avoid any significant impact. (Declaration of Witherspoon, p.4).

After her environmental review, Witherspoon issued a final "Mitigated" Determination of Non-Significance (MDNA) on October 27, 2004. The MDNS and other environmental documents were circulated to interested members of the public, the applicant, and 14 other agencies with jurisdiction. (Declaration of Witherspoon, p.4). On March 10, 2005, Skamania County transferred the property to Wind River Public Development Authority, a newly created

public development authority (PDA) that the County planned to utilize for development of its property. (Appellant's Response to Respondent's Motion for Summary Judgment, Exhibit A5).

The PDA applied to DNR for a forest practices application (FPA No. 2910947) for a permit to harvest trees on the property. The proposed harvest of approximately 523 thousand board feet on a total of 12.15 acres is in the vicinity of Martha Creek and Trout Creek, both type 3 waters. The County submitted application No. 2910947 to DNR for a Class IV/Riparian Harvest forest practice on October 8, 2004 and January 12, 2005. DNR forester, Steven Hartsell, is a DNR forest practices forester who reviews forest practices applications to determine whether they are complete, accurate and consistent with the Forest Practices Act and rules. Hartsell may condition or disapprove an application if authorized by the Forest Practices Act or rules and his authority includes some general power to condition for the protection of public resources or for Class IV applications to minimize adverse environmental impacts under SEPA. Hartsell was responsible for reviewing Application No. 2910947.

Hartsell received Application No. 2910947 at the DNR Castle Rock office on January 14, 2005. It was classed as a Class IV, involving the conversion of forestland to a use not compatible with growing timber and containing archeological/historical resources. The SEPA review documents for the County's proposal (the SEPA environmental Checklist and the MDNS issued by Karen Witherspoon) were submitted along with the application. In November 2004, Hartsell had agreed upon the riparian zones with the County's forester. On January 20, 2005, Hartsell "field verified" the application with special emphasis regarding the Riparian

Management Zones (RMZs) and concluded that the application and field marking were appropriate and that the required protection for the waters had been addressed. At the time he was reviewing Application No. 2910947, Hartsell assumed that steelhead stock existed in Martha Creek, based on a 1992 Salmon and Steelhead Stock Inventory. As Hartsell's review was guided by the RMZ width requirements covered under WAC 222-30-021 of the Forest Practice Rules, and the fact that DNR's application forms do not ask for the identification of specific fish presence, he did not ask for additional information in that regard and Hartsell treated the application as complete and accurate, although steelhead were not specifically referenced. Hartsell treated the proposal as excluding any harvest within 105 feet of Martha and Trout Creeks and limiting harvest within 140 feet, which protections are part of the March 2000 Forest and Fish Rule package. (Declaration of Steven Hartsell, p.3). DNR issued a decision approving the forest practice on January 31, 2005. This appeal followed.

ISSUES

The legal issues in this case, as contained in the Pre-Hearing Order are as follows:

1. Whether the FPAB lacks jurisdiction to review procedural SEPA challenges to an approved forest practices application where DNR was not the SEPA lead agency.

2. If the FPAB has jurisdiction to review Appellant's procedural SEPA challenge, whether the identification of new information relating to probable significant adverse impacts may be grounds to overturn an approved forest practices application where DNR is not the lead agency.

3. If the answer to Issue #2 is yes, whether the existence of steelhead was adequately identified in the proposal or associated environmental documents, and, if not adequately identified, whether the presence of steelhead is significant new information relating to probable significant adverse environmental impacts.

4. Whether Appellant's assertion that Forest Practices Application No. 2910947 will adversely impact a USGS study provides grounds under the Forest Practices Act or State Environmental Policy Act upon which relief may be granted. If so, whether impacts on the USGS study in this case warrant denial of the application.

5. Whether DNR's approval of Forest Practices Application No. 2910947 should be reversed on any of the above grounds.

6. Whether the application should be disapproved based on the omission from application materials of pertinent facts including the presence of an Endangered Species Act (ESA) listed species in Martha Creek.

7. Whether the DNR should have denied the application based upon the presence of steelhead, a listed species under the ESA in the project area and the project's impact on this species and habitat.

8. Whether approval of the application violated the ESA.

9. Whether relevant agencies failed to follow local, state and federal rules regarding threatened species and habitat. If so, whether the application approval should be overturned on that basis.

10. Whether any conflict of interest exists in this case, and, if so, whether it forms the basis for overturning DNR's decision on the application.

11. Whether Skamania County was not delegated the authority to transfer its timber cutting permit, issued by the Department of Natural Resources, to the Public Development Authority (PDA)?

12. Whether permit FPA 2910947 was given to the County but never legally assigned to the PDA.

13. Whether the County has legal title to the Wind River Nursery and has legal authority to cut timber or permit others to cut timber on the Wind River Nursery.

14. Whether the project involves unconstitutional expending of public assets for private purposes.

15. Whether the FPAB has jurisdiction over the legal issues raised by the appellant.

ANALYSIS

Summary judgment is a procedure available to avoid unnecessary trials on formal issues that cannot be factually supported and could not lead to, or result in, a favorable outcome to the opposing party. *Jacobsen v. State*, 89 Wn.2d 104, 569 P.2d 1152 (1977). The summary judgment procedure is designed to eliminate trial if only questions of law remain for resolution. Summary judgment is appropriate when the only controversy involves the meaning of statutes, and neither party contests the facts relevant to a legal determination. *Rainier Nat'l Bank v. Security State Bank*, 59 Wn.App. 161, 164, 796 P.2d 443 (1990), *review denied*, 117 Wn.2d 1004 (1991).

The party moving for summary judgment must show there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182; 930 P.2d 307 (1997). A material fact in a summary judgment proceeding is one that will affect the outcome under the governing law. *Eriks v. Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). In a summary judgment, all facts and reasonable inferences must be construed in favor of the nonmoving party as they have been in this case. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

The issues before the Board in this motion concern whether the challenged FPA 2910947 approved by the DNR should be dismissed on the grounds that the proponent Skamania County was also the lead agency making the SEPA mitigated determination of non-significance.

Appellant Repar challenges the forest practices permit on other grounds as well, including the Endangered Species Act, property ownership and application issues, and also an allegation of unconstitutional expenditure of public assets. The only permit at issue in this appeal is the DNR's approval of FPA 2910947, which is one permit of several that were necessary for Skamania County and its PDA to develop the property. The other permits that were part of the County's proposal were processed through the Skamania County land use permitting process. No appeal was filed in the County land use approval and SEPA process. (Declaration of Witherspoon, p.4).

The DNR administers and enforces the forest practice rules promulgated by the Forest Practices Board (FPB) pursuant to RCW 76.09.040 and .050. The FPB is specifically delegated the task of establishing by rule which forest practices fit into each of four defined classes, based on their potential environmental impact: Class I, Class II, Class III and Class IV. SEPA review is required for Class IV forest practices, but Class I, II and III forest practices are exempt from SEPA. RCW 76.09.050(1); RCW 43.21C.037(1). The instant case involves a Class IV forest practice. Class IV forest practices are those that have a potential for a substantial impact on the environment and therefore require an evaluation as to whether or not an EIS must be prepared. RCW 76.09.050(1)(d); RCW 43.32C.037(3). In the instant case, SEPA review was already completed by Skamania County as the lead agency for the project of which FPA 2910947 was a part when the County applied for FPA 2910947. In the course of SEPA review, DNR had received SEPA notice along with the other agencies, none of which, including DNR,

commented. The SEPA review materials, including the MDNS were transmitted to DNR with the County's application for FPA 2910947, but DNR did not conduct a separate SEPA process since it was not the lead agency for the development proposal.

A. Issues Pertaining to SEPA Process[1]

Skamania County was the lead agency for the Wind River development proposal. This is in accord with SEPA rules. When an agency initiates a proposal, it is the lead agency for that proposal. WAC 197-11-926 (1). Skamania County Planning Director, Karen A. Witherspoon, AICP, was in charge of the approval process for the local land use permits and she served as the SEPA responsible official who reviewed the environmental impacts posed by Skamania County's proposal to harvest approximately 12 acres of timber located in six different cutting units over 12.15 acres. Whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal. WAC 197-11-926(2). Ms. Witherspoon does not work for the PDA. (Declaration of Witherspoon, p.2). Appellant Repar has alleged that it was improper for Witherspoon to conduct the environmental review and that there is a conflict of interest when an agency conducts environmental review for its own project. There is no basis in the law for that contention. Not only do the SEPA rules provide for agencies to be lead agency for their proposals, the fact that a lead agency is responsible for the review of its own

[1] The issues appeared as above in the pre-hearing order. However, for purposes of this motion, the parties did not set forth their arguments by individual issue. Accordingly, the Board addresses the issues in a similar collective fashion by subject.

proposal does not violate the appearance of fairness doctrine or other conflict of interest laws. *See* R.L. Settle, Washington Land Use and Environmental Law and Practice Ch. 6 (1983).

The facts and arguments of this case are similar to those considered by Division One of the Court of Appeals in 1992. The City of Everett was the lead agency charged with making the threshold determination whether an EIS would be required on a new zoning code for which the City was the proponent. *Trepanier v. City of Everett*, 64 Wn.App. 380; 824 P.2d 524 (1992), *rev. denied* 119 Wn.2d 1012, 833 P.2d 386 (1992). Trepanier had contended that a conflict of interest existed when the proponent of a project undergoing SEPA review was also the lead agency charged with making the threshold determination whether an EIS was required. The Court disagreed for several reasons. First, as indicated above, the SEPA rules provide that when an agency initiates a proposal, it is the lead agency for that proposal (WAC 197-11-926(1)) and they also include an internal independence mechanism for the environmental decision making by providing that, whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal. (WAC 197-11-926(2)). Second, the *Trepanier* court pointed out that any perceived appearance of unfairness in that case would have been cured by the availability of administrative review before the local legislative body. It is the same in this case. Administrative review was available to Ms. Repar before the Skamania County Board of County Commissioners. She filed no appeal. And, also parallel to this case, Trepanier had asserted bias with no factual basis to support such a contention. It is the same in this case. Ms. Repar has made allegations of fraud and conflict of interest. But she has provided

absolutely no evidence of any such impropriety. The *Trepanier* court said "[a]bsent a showing of bias or circumstances from which it may be presumed, the Council's consideration of its own proposed code does not violate the appearance of fairness doctrine. *See, Christensen v. Terrell*, 51 Wash.App. 621, 632-33, 754 P.2d 1009 (1988)." *Trepanier, supra* at 385 (1992).

Third, the *Trepanier* court found no showing either in the process in question or historically in the land use decision making process in general that City planning staff (a City executive body) and the City Council necessarily shared the same views of the environmental impacts of the City's proposal. Thus there was no reason to assume that the administrative process provided for the project itself was somehow inadequate protection against the potential for conflict between the municipal proponent and the lead agency. Fourth, the *Trepanier* court held that the right to appeal the municipality's decision to superior court satisfied any due process concerns. In this case, Ms. Witherspoon, the responsible official, does not work for the PDA, which is a separate Skamania County entity not within the Planning Department, nor does Witherspoon personally gain by having the County's proposal go forward. (Declaration of Witherspoon, p.3).

In support of her allegations of fraudulent misrepresentations in the instant case, Ms. Repar provided the Board with the following: a copy of Skamania County's published notice of the MDNS (Exhibit A-1); the distribution list for notice of the proposal showing those that received the SEPA checklist and those who did not (Exhibit A-2); a copy of one portion of Title 21A of Skamania County's Critical Areas Ordinance (Exhibit A-3); newspaper articles from the

Skamania county Pioneer (Exhibits A-4, A-6); an uncertified copy of a quit claim deed (A-5); and a copy of an April 13, 2005 letter from the Washington Department of Fish and Wildlife commenting upon an amendment to the Skamania County Critical Areas Ordinance (Exhibit A-7). None of these exhibits refutes the facts provided by DNR in support of its Motion for Summary Judgment. Ms. Repar provided no declarations providing sworn facts at all. Even assuming that these exhibits were sworn to, they would not raise genuine issues of material fact.

Appellant Repar faults the response of Skamania County on the environmental checklist concerning the possible existence of any threatened or endangered species known to be on or near the site because the County's response was "none known." The checklist instructs respondents to provide answers based on the applicant's own knowledge and observations. "Do not know" is an appropriate response if that is true. In reviewing the checklist, Witherspoon had no knowledge that steelhead were present in the vicinity of the proposal and she believed that the SEPA documents accurately identified existing environmental conditions. (Supplemental Declaration of Witherspoon, p. 2). Although Ms. Repar challenges Witherspoon's statement and accuses Witherspoon of fraud, no evidence whatsoever has been submitted to support such an allegation as to either Ms. Witherspoon or any other Skamania County officials. In any event, courts have not found environmental review to be suspect simply because checklist responses are imperfect or incomplete where the overall process is credible, provided that specific statutory and administrative requirements are plausibly satisfied. *See, e.g. Brown v. City of Tacoma*, 30 Wn.App. 762, 637 P.2d 1005 (1981).

If a responsible official determines that the information on a checklist is insufficient to make a determination, there are tools to supplement that information. An applicant may be required to furnish additional information; a lead agency may initiate studies and investigations of its own; or a reviewing agency may consult with other agencies with jurisdiction over the proposal that have expertise in the particular areas of possible environmental impacts. WAC 197-11-335. In this way, a lead agency may remedy any shortcomings in the checklist responses provided by calling for additional information as well as consulting with other agencies having special expertise in the area of concern. WAC 197-11-335(2). In this case, the environmental review documents, including the MDNS were circulated to the public and other agencies with expertise related to the presence of endangered species in the streams such as the DNR, the Washington Department of Fish and Wildlife, and the Department of Ecology. (Appellant's Exhibit A-2). There were no comments submitted by any of these agencies. Lack of comment by other agencies or members of the public on environmental documents within the time periods specified in WAC Chapter 197-11 must be construed as lack of objection to the environmental analysis once notice requirements are met. WAC 197-11-545.

On January 14, 2005, Steven Hartsell, DNR's forest practices forester, received the SEPA review documents for Skamania County's proposal along with Application No. 2910947, including the MDNS issued by Planning Director Witherspoon in October, 2004. Hartsell had authority to approve and/or condition the FPA, but he was also aware that he could only condition or disapprove a forest practices application to the extent authorized by the Forest

Practices Act and Rules. The forest practices rules include general authority to condition a permit for the protection of public resources and, for a Class IV application, to minimize adverse environmental impacts pursuant to SEPA. Hartsell was aware that no comments had been received regarding the County's final SEPA MDNS. (Declaration of Hartsell, p. 2). Hartsell "field verified" the forest practices application with special emphasis regarding the riparian management zones (RMSs) in January of 2005. Even though steelhead were not specifically referenced, Hartsell regarded the application as complete and accurate, although Hartsell did not interpret the environmental checklist as establishing that no endangered species were present. (Supplemental Declaration of Hartsell, p. 2). The proposal excluded any harvest within 105 feet of Martha Creek and Trout Creek and limited harvest within 140 feet. Hartsell regarded this as consistent with the Forest and fish Rule package approved by DNR in March of 2000 and approved FPA 2910947 in March of 2000. (Declaration of Hartsell, p.3).

The Board does not agree that it lacks jurisdiction to overturn a DNR decision based upon SEPA. All branches of government in the State of Washington have an obligation to the fullest extent possible to, among other things, consider environmental impacts of their actions and decisions and to initiate and utilize ecological information in the planning and development of natural resource-oriented projects. RCW 43.21C.030. Like all state agencies, DNR has independent obligations under SEPA and the means to fulfill its obligation. If there had been a concern that the information provided in the SEPA process was incorrect, false, missing, or incomplete, DNR and other reviewing agencies had legal options to address such concerns and

even to assume lead agency status and make an independent environmental review within the context of the project review process. WAC 197-11-948. DNR always retains its own authority and obligations under SEPA to ensure that environmental concerns are addressed by the use of several tools. Mechanisms exist for any agency of the State of Washington to fulfill SEPA obligations, even where an agency is not the lead agency. When consulted by a lead agency, any agency with expertise may address the adequacy of the environmental document or the merits of the alternatives discussed or both. A reviewing agency must specify any additional information or mitigation measures it considers necessary or desirable to satisfy its concerns. WAC 197-11-550. If an agency with jurisdiction is dissatisfied with a DNS it may assume lead agency status. WAC 197-11-600. A lead agency must withdraw a DNS if a DNS was procured by misrepresentation or lack of material disclosure. WAC 197-11-340(3)(a). When there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies must make clear that such information is lacking or that substantial uncertainty exists. WAC 197-11-080.

At the time the MDNS in this case was being reviewed, no agency raised a concern about incompleteness, nor was there, or indeed is there now, any credible evidence that there was any fraud, misrepresentation, or concern over the correctness of the available information about endangered species in Martha Creek and Trout Creek. Absent any facts that establish a factual basis for a claim of fraud and misrepresentation, the Appellant's allegations do not successfully refute the evidence provided in support of the Motion for Summary Judgment on the SEPA-

related issues. Also, there is no evidence that the SEPA process in this case was clouded by fraud or dishonesty or that it was inadequate with regard to the consideration of possible endangered species or that the mitigation measures provided by application of the Forest Practice rules fail to address that possibility. Therefore the Board concludes that Issues 1, 2, 3, 4, 5, 6, 7 and 10 should be dismissed from this case.

B. Other Issues

The Forest Practices Appeals Board (FPAB) is an administrative agency and may exercise only the power expressly granted to it by statute or necessarily implied from the grant. *Skagit Surveyors and Engineers, LLC v. Friends of Skagit* County, 135 Wn.2d 542, 558, 958 P.2d 962 (1998); *Kaiser Aluminum & Chemical Corp. v. Department of Labor & Industries*, 121 Wn.2d 776, 780, 854 P.2d 611 (1993). The Board's jurisdiction is specifically set forth in statute and a party opposing a summary judgment motion to dismiss must identify some statutory authority that would allow the Board to grant meaningful relief if the case proceeds to hearing.

1. Endangered Species Act.

In this case, Appellant has asserted violation(s) of the federal Endangered Species Act (ESA), 16 U.S.C. §§ 1531 to 1544, and violations of various aspects of Washington property law, and also that Skamania County committed constitutional violations. She asks this Board to order the SEPA process reopened. The FPAB has jurisdiction only over forest practices appeals. The Forest Practices Appeals Board has no statutory jurisdiction to fashion an equitable remedy, or to determine legal title to property, or to decide constitutional issues.

The Appellant has asserted that approval of FPA No. 2910947 violated the ESA and generally failed to follow local, state and federal rules regarding threatened species and habitat. DNR administers the Forest Practices Act only, and not the ESA. There has been no showing in this case that Skamania County's forest practices application failed to comply with the Forest Practices Act or its regulations. The Board has held previously that DNR is not directly responsible for enforcing the ESA. The Forest Practices Board (FPB) has promulgated rules pursuant to the Forest Practices Act that take into account DNR's environmental obligations under the ESA and other laws. However the FPB does not enforce or implement the ESA. Rather, the forest practices rules are designed to recognize the requirements of the ESA and avoid duplication where possible. *SDS Lumber Company v. State of Washington, Department of Natural Resources*, FPAB No. 98-5 (1998). In this case, DNR biologist Hartsell applied the Forest Practices Rules that already include protection to aquatic resources. They exclude harvest with 105 feet of Martha Creek and Trout Creek and limit harvest within 140 feet. These protections are part of the 2000 Forest and Fish Rule package. (Declaration of Hartsell, p. 3). Therefore granting summary judgment as to Issues 8 and 9 is appropriate since this Board lacks jurisdiction to decide the issues presented.

2. Property and Constitutional Issues

The Board also does not address these issues as it lacks the authority to do so. Under the Forest Practices Act, this Board was not given express authority to address property ownership or state constitutional issues concerning the prohibition on the expenditure of public resources

for private purposes that have been raised by the Appellant. See generally, RCW 76.09. In addition the Superior Courts have original jurisdiction to address such types of claims. *Chaney, et al. v. Fetterly, et al.*, 100 Wn.App. 140, 148, 995 P.2d 1284 (2000), *review denied*, 142 Wn.2d 1001 (2000), citing *Valley View v. Redmond*, 107 Wn.2d 621, 633, 733 P.2d 182 (1987). Therefore, this Board cannot address the constitutional and property claims made by Appellant and it concludes that it is proper to grant summary judgment dismissal as to Issues 11, 12, 13, 14 and 15.

ORDER

In accordance with the analysis above, summary judgment is granted in favor of the respondents Department of Natural Resources and Skamania County on all issues. The case is, therefore, dismissed with prejudice and without costs to either party.

DONE this 28th day of June 2005.

FOREST PRACTICES APPEALS BOARD

Tom P. May, Chair

John Giese, Member

Cassandra Noble
Administrative Appeals Judge, Presiding